EDITOR'S NOTE

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87 - 1145 (1)

Supreme Court, U.S.
FILED
DEC 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

TERM

NO.

DAVID A. POTTER, LAYMAN APPELLANT/PETITIONER PRO SE

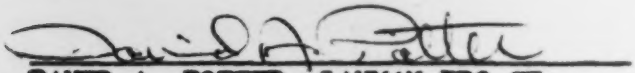
V.

THE WACKENHUT CORP., ET ALIA, APPELLEES/RESPONDENTS

APPEAL FROM THE UNITED STATES COURT
OF APPEALS -- ELEVENTH CIRCUIT;
AND,
THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JURISDICTIONAL STATEMENT

RESPECTFULLY SUBMITTED BY



DAVID A. POTTER, LAYMAN PRO SE
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(813) 729-7095 / 776-2243

U.S.C.A. NO. 87-3010

U.S.D.C. NO. 86-586-CIV-T-13(C)

26pp

THE QUESTIONS PRESENTED BY THE APPEAL ARE:

1.) WHETHER OR NOT AN IMPAIRD OR DISABLED OR HANDICAPPED LAYMAN PRO SE CAN BE DENIED OR DEPRIVED OF DUE PROCESS AND OF HIS CONSTITUTIONAL PROPERTY RIGHT TO MAINTAIN AN ACTION FOR DAMAGES AGAINST EMPLOYERS, ET AL, FOR SERIOUS AND WILLFUL INJURIES BECAUSE THE PRO SE WAS WHOLLY IGNORANT OF AND, HAD NO REASON TO APPREHEND THAT COMPLAINT WITH E.E.O.C. IS PREREQUISITE TO MAINTENANCE OF DISCRIMINATION SUIT UNDER TITLE VII ?

2.) WHETHER OR NOT AN IMPAIRED OR DISABLED OR HANDICAPPED LAYMAN PRO SE CAN BE DENIED OR DEPRIVED OF DUE PROCESS AND OF HIS CONSTITUTIONAL PROPERTY RIGHT TO MAINTAIN AN ACTION FOR DAMAGES AGAINST EMPLOYERS, ET AL, FOR SERIOUS AND WILLFUL INJURIES SUSTAINED BY REASON OF EMPLOYMENT DISCRIMINATION AND BAD FAITH, INTER ALIA, BECAUSE HE WAS PREVENTED FROM LEARNING HIS RIGHTS AND ENFORCING SAME DUE TO FEAR AND IGNORANCE, AND BECAUSE OF BAD FAITH, DECEIT, DURESS, OPPRESSION, INTIMIDATION, COERCION, MALICE, AND, WILLFUL NEGLIGENCE PER SE BY HIS EMPLOYERS ET AL ?

3.) WHETHER OR NOT AN IMPAIRED OR DISABLED OR HANDICAPPED LAYMAN PRO SE CAN BE DENIED OR DEPRIVED OF DUE PROCESS AND OF HIS CONSTITUTIONAL PROPERTY RIGHT TO

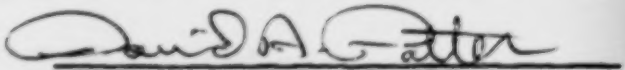
MAINTAIN AN ACTION FOR DAMAGES AGAINST EMPLOYERS, ET AL, FOR SERIOUS AND WILLFUL INJURIES BECAUSE THE PRO SE WAS PREVENTED FROM LEARNING HIS RIGHTS AND ENFORCING THE SAME DUE TO PHYSICAL, PSYCHOLOGICAL AND FINANCIAL INJURIES AND HARDSHIPS BY REASON OF BRUTAL ASSAULT AND BATTERY, EMPLOYMENT DISCRIMINATION, BAD FAITH, INTER ALIA, OCCURRING AGAINST HIM DURING AND IN THE COURSE OF OPPRESSIVE AND DISCRIMINATORY EMPLOYMENT ?

4.) WHETHER OR NOT THE FLORIDA STATUTES CHAPTER 440, (WORKERS COMPENSATION) PROVISION GRANTING EMPLOYERS, ET AL, ABSOLUTE IMMUNITY FROM LAWSUITS, AND UNFAIRLY SHIFTS THE BURDEN OF PROOF IN CIVIL ACTIONS, AND DENIES OR DEPRIVES AN IMPAIRED OR DISABLED OR HANDICAPPED EMPLOYEE OF DUE PROCESS AND HIS CONTITUTIONAL PROPERTY RIGHT TO MAINTAIN AN ACTION FOR DAMAGES FOR SERIOUS AND WILLFUL INJURIES, VIOLATE THE CONSTITUTION AND LAWS OF THE UNITED STATES AND THE AMENDMENTS THEREOF ?

5.) WHETHER OR NOT TITLE 18 USCS 1512 ET SEQ. PROVIDES OR INFERS A PRIVATE CAUSE OF ACTION AGAINST ANYONE EXCLUDING GOVERNMENT FOR HINDERING, DELAYING OR PREVENTING A WITNESS, VICTIM OR INFORMANT FROM COMMUNICATION TO A LAW ENFORCEMENT OFFICER OR JUDGE OF THE UNITED STATES OF INFORMATION RELATING TO THE COMMISSION OR POSSIBLE COMMISSION OF A FEDERAL OFFENSE ?

CERTIFICATE OF INTERESTED PARTIES

APPELLEES / RESPONDENTS	COUNSELS OF RECORD
1. THE WACKENHUT CORP., ET AL 7729 HOLIDAY DRIVE SARASOTA, FL 33581-5315 (813) 921-4475	ALLEY & ALLEY CHARTERD 205 BRUSH STREET TAMPA, FL 33601 (813) 229-6481
2. HAROLD BERGER REAL ESTATE, ET AL, 1900 MAIN STREET, SUITE 307 SARASOTA, FL 33577 (813) 366-2411	GREG HOOTMAN, ESQ. 1750 Ringling BLVD. SARASOTA, FL 33577 (813) 366-4680
3. KNOWLES-WALLIS INC. ET AL 35 SOUTH BLVD. PRESIDENTS ST. ARMANDS, SARASOTA, FL 33577 (813) 388- 3825	CRABTREE & ASSOC. 100 S. WASHINGTON BLVD. SARASOTA, FL 33577 (813) 365-4600
4. THE HOME INSURANCE CO.// THE ROYAL INSURANCE CO. 501 WYMORE RD. WINTER PARK, FL 32790// 6201 AMAR- ETTO LANE, TAMPA, FL 33614 (813) 1-800-432-1823// 831-5599	MARLOW, SHOFI, SMITH, HENNEN & SMITH, P.A. 2907 BAY TO BAY BLVD. SUITE 201, TAMPA, FL 33629. (813) 831-5599



DAVID A. POTTER, PRO SE

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TABLE OF AUTHORITIES

1. "THIS ACTION IS BROUGHT PURSUANT TO THE CONSTITUTION AND THE LAWS OF THE UNITED STATES." ---RECORD REFERENCE: (R1-1-1)(3). PLEASE SEE ABRIDGED APPENDIX.

2. WOLFF V MCDONNELL, 41 L ED 2D 935, "THE RIGHT OF ACCESS TO THE COURTS IS FOUNDED IN THE DUE PROCESS CLAUSE AND ASSURES THAT NO PERSON WILL BE DENIED THE OPPORTUNITY TO PRESENT TO THE JUDICIARY ALLEGATIONS CONCERNING VIOLATIONS OF FUNDAMENTAL CONSTITUTIONAL RIGHTS." (R1-23-1) (R1-24-12) (R1-26-1)(R1-32-9).

OPINION OF THE COURTS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS--ELEVENTH CIRCUIT, IS REPORTED AT NO. 87-3010; THE OPINION OR FINAL ORDER OF THE UNITED STATES DISTRICT COURT---MIDDLE DISTRICT OF FLORIDA---TAMPA DIV., IS REPORTED AT NO. 86-586-CIV-T-13(C).

CONCISE STATEMENT OF JURISDICTION

THE PRO SE BELIEVES THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA HAS JURISDICTION TO HEAR THIS APPEAL PURSUANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES AND THE AMENDMENTS THEREOF.

THE NATURE OF THE PROCEEDINGS BELOW:

THIS IS A "CIVIL ACTION" APPEAL BY DAVID A. POTTER, LAY-MAN PRO SE, FROM THE FINAL ORDER OF THE U. S. DIST. COURT---MIDDLE DIST. OF FLORIDA---TAMPA DIV. DISMISS-ING POTTER'S COMPLAINT: " . . . HAS FAILED TO STATE A COGNIZABLE CLAIM WITHIN THE JURISDICTION OF THIS COURT." THE U.S.C.A.---11 TH CIRC., AFFIRMED THAT ORDER ON 10-6-87, AND ISSUED THE MANDATE ON 11-2-1987. THE NOTICE OF APPEAL TO THE TO THE UNITED STATES SUPREME COURT WAS MAILED TO THE COURT OF APPEALS ON 10-14-'87, AND WAS STAMPED AND FILED BY THE CLERK OF THE FEDERAL APPEALS COURT ON 10-19-'87. THE PRO SE CERTIFIES THAT HE ALSO MAILED A TRUE COPY OF THE 12 PAGE NOTICE OF APPEAL TO THE SUPREME COURT, TO THE APPELLEES COUNSELS OF RECORD ON 10-14-'87; THAT IS, ONE ORIGINAL AND TWO COPIES THE APPEALS COURT; AND ONE COPY TO EACH FIRM OF COUNSELS OF RECORD ON 10-14-'87. THE REASONS FOR THE PRO SE'S DE-LAYS IN DOCKETING THIS APPEAL ARE HIS INEXPERIENCE AND FAILURE TO COMPLY WITH RULE 33 OF THIS COURT. THE PRO SE BELIEVES HIS THIRD ATTEMPT TO COMPLY WITH THE RULES OF THIS COURT WILL BE TIMELY, AND MADE IN GOOD FAITH SO AS TO ALLOW DOCKETING THE CASE OR CONTROVERSY.

STATUTORY JURISDICTIONAL STATEMENT

UNITED STATES CONSTITUTION, ARTICLE 6, CLAUSE 2

THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF . . . , UNDER THE AUTHORITY OF THE UNITED STATES, SHALL BE THE SUPREME LAW OF THE LAND; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

. . . "THE SUPREME COURT OR ANY OTHER COURT OF APPELLATE JURISDICTION MAY AFFIRM, MODIFY, VACATE, SET ASIDE OR REVERSE ANY JUDGMENT, DECREE, OR ORDER OF A COURT LAWFULLY BROUGHT BEFORE IT FOR REVIEW, AND MAY REMAND THE CAUSE AND DIRECT THE ENTRY OF SUCH APPROPRIATE JUDGMENT, DECREE, OR OERDER, OR REQUIRE SUCH FURTHER PROCEEDINGS TO BE HAD AS MAY BE JUST UNDER THE CIRCUMSTANCES." 28 USCS 2106.

CONCISE STATEMENT OF THE CASE OR CONTROVERSY

1. THE LAYMAN PRO SE WAS A VICTIM OF CRIME, AND A VICTIM OF RELIGIOUS AND HANDICAPPED DISCRIMINATION DURING AND IN THE COURSE OF HIS EMPLOYMENT; AND, A VICTIM OF DECEIT AND BAD FAITH, INTER ALIA; AND, A VICTIM OF AN UNPROVOKED VICIOUS, BRUTAL ASSAULT AND BATTERY ; AND, A VICTIM OR FEAR, OPPRESSION, INTIMIDATION, DURESS, COERCION, THREATS AND EXTORTION. HE WAS ALSO A VICTIM OF PHYSICAL, PSYCHOLOGICAL AND FINANCIAL INJURIES AND HARDSHIPS AS A RESULT OF THE ABOVE, DURING THE COURSE OF EMPLOYMENT, AND TO THE PRESENT; AND, FIRED FROM EMPLOYMENT FOR THE FOLLOWING REASONS: . . .

1-A. ... . FOR COMPLAINING ABOUT AND REPORTING EMPLOYMENT RELATED UNETHICAL AND UNLAWFUL ACTIVITIES BY CO-EMPLOYEES ET AL TO EMPLOYERS AND TO LOCAL, STATE AND FEDERAL AUTHORITIES. . . .

1-B. . . . FOR FILING AND PURSUEING A VALID CLAIM FOR MEDICAL CARE FOR INJURIES SUSTAINED BY REASON OF BRUTAL ASSAULT AND BATTERY OCCURRING DURING AND IN THE COURSE OF EMPLOYMENT . . . SAID ASSAULT AND BATTERY, INTER ALIA, DIRECTLY RELATED TO ITEM 1-A ABOVE. . . .

CONCISE STATEMENT OF THE CASE OR CONTROVERSY

1-C. . . . FOR COMPLAINING ABOUT AND REPORTING HAZARDOUS WORKING CONDITIONS TO EMPLOYERS ET AL, AND VER - BALLY TO THE O.S.H.A. PEOPLE IN TAMPA, FLORIDA, ET AL.

1-D. . . . FOR REFUSING TO SIGNATURE UNDER COERCIVE-DURESS A BLANKET RELEASE ABSOLVING EMPLOYERS, ET AL, OF ANY AND OR ALL LIABILITY DIRECTLY RELATED TO ITEMS: 1-A; . . . 1-B; . . . 1-C, CITED ABOVE.

QUESTIONS / ISSUES: HOW RAISED BELOW

ALL OF THE QUESTIONS / ISSUES HEREIN WERE RAISED AND CLEARLY IMPLIED BY ANALOGIES IN THE U.S. DIST. COURT VIA THE LENGTHY, LARGELY HANDWRITTEN, PRO SE COMPLAINT; AND, BY "MOTIONS TO ADMIT ADMISSIONS AND INFERENCES" ; AND, "MOTIONS TO PROCEED"; IN SHORT, BY CITING TO NUMEROUS AND LENGTHY ALLEGATIONS OF FACTS, AND STATUTORY AND CONSTITUTIONAL PRINCIPLES; AND BY PRO SE'S CONCLUSIONS, PERCEPTIONS AND OPINIONS OF LAWS, AS REVEALED IN THE RECORD, AND REPORTED AT U.S.D.C. NO. 86-586-CIV-T-13(C). . . .

QUESTIONS / ISSUES ; HOW RAISED BELOW

THE QUESTIONS / ISSUES ON APPEAL TO THE U.S.C.A. --- 11 TH CIRC., WERE SUBSTANTIALLY CONDENSED OR ABRIDGED IN THE INTEREST OF ECONOMY AND BREVITY, AND IN LIGHT OF PRO-SE'S MODEST FINANCIAL RESOURCES; AS REVEALED IN THE RECORD AND REPORTED AT U.S.C.A. -- 11 TH CIRCUIT NO. 87-3010.

THE ISSUE OF THE CONSTITUTIONALITY AND SUFFICIENCY OF FLORIDA'S WORKERS COMPENSATION STATUTE WAS TIMELY RAISED IN A STATE HEARING REPORTED AT NO. 263-80-3882, AND WAS ALSO RAISED IN THE U.S. DIST. COURT, AS REVEALED AND REPORTED AT U.S.D.C. NO. 86-586-CIV-T-13(C); AND WAS AGAIN RAISED IN THE FEDERAL APPEALS COURT WHICH IS REPORTED AT U.S.C.A. 11TH CIRC. ORDER OF 5-1-'87. THE ISSUE WAS RAISED IN THE U.S.D.C. AT NO. 86-586-CIV-T-13(C) AT (R1-17-1).

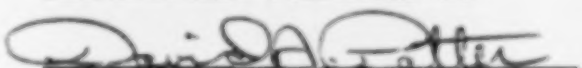
CONCLUSION

THE LAYMAN PRO SE RESPECTFULLY SUBMITS TO THE HONORABLE SUPREME COURT THAT IN THE UNITED STATES OF AMERICA, UNDER OUR CONSTITUTION AND LAWS AND THE AMENDMENTS THEREOF, IT IS BAD ENOUGH TO BE DENIED OR DEPRIVED OF ONE'S RIGHTS, PRIVILEGES, PROPERTY AND IMMUNITIES, BUT IT IS FAR WORSE TO BE PUNISHED FOR STANDING UP OR ATTEMPTING TO STAND UP FOR ONE'S RIGHTS, PRIVILEGES, PROPERTY AND IMMUNITIES.

THE PRO SE RESPECFULLY SUBMITS THAT THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION, WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT, FOR THEIR RESOLUTION.

WHEREFORE, THE PRO SE RESPECTFULLY PLEADS, PETITIONS AND PRAYS THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA WILL HEAR THIS APPEAL ON ALL THE ISSUES AND ON THE MERITS.

RESPECTFULLY SUBMITTED BY



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IN THE SUPREME COURT OF THE UNITED STATES

ABRIDGED APPENDIX

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 87-3010

NON-ARGUMENT CALENDER

D.C. DOCKET NO. 86-586

DAVID A. POTTER

PLAINTIFF-APPELLANT

VERSUS

THE WACKENHUT CORPORATION,
ET ALIA,

DEFENDANT-APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

(OCTOBER 6, 1987)

BEFORE TJOFLAT, HATCHETT AND CLARK, CIRCUIT JUDGES.

PER CURIAM:

AFFIRMED. SEE 11 TH CIR. R. 36-1.

"COSTS TAXED AGAINST PLAINTIFF-APPELLANT"

JUDGMENT ENTERED : OCTOBER 6, 1987

FOR THE COURT : MIGUEL J. CORTEZ, CLERK

BY : / S /

DAVID MALAND DEPUTY CLERK

ISSUED AS MANDATE : NOV 2 1987

U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

FILED

MAY 1 1987

MIGUEL J. CORTEZ

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 87-3010

DAVID A. POTTER, PLAINTIFF-APPELLANT,

VERSUS

THE WACKENHUT CORPORATION,
ET ALIA, DEFENDANT-APPELLEE.

- - - - - - - - - - - - - - - - - - - -

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR

THE MIDDLE DISTRICT OF FLORIDA

- - - - - - - - - - - - - - - - - - - -

BEFORE RONEY, CHIEF JUDGE, HILL AND KRAVITCH,

CIRCUIT JUDGES

BY THE COURT:

APPELLANT'S PRO SE "NOTICE THAT CASE ALSO INVOLVES CONSTITUTIONALITY OF STATE STATUTE", WHICH IS CONSTRUED TO BE A REQUEST TO CERTIFY QUESTION TO THE ATTORNEY GENERAL FOR THE STATE OF FLORIDA, IS CARRIED WITH THE CASE, IT NOT PRESENTLY APPEARING THAT THE DECISION OF THIS APPEAL INVOLVES THE CONSTITUTIONALITY OF THE STATUTE, THE APPEAL ONLY BEING FROM DISMISSAL OF A COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION.

MOT. 6

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

DAVID A. POTTER,
PLAINTIFF

VS CASE NO. 86-586-CIV-T-13(C)

THE WACKENHUT CORPORATION,
ET AL., DEFENDANTS.

O R D E R

UPON REVIEW OF THE COMPLAINT, THE MOTION TO DISMISS AND RESPONSES THERETO, THIS COURT FINDS THAT THE PLAINTIFF, EVEN GIVEN THE LIBERAL STANDARD AFFORDED PRO SE LITIGANTS, HAS FAILED TO STATE A COGNIZABLE CLAIM WITHIN THE JURISDICTION OF THIS COURT. SEE EG. STAFFORD V. MUSCOGEE COUNTY BOARD OF EDUCATION, 688 F .2d 1383 (11th CIR. 1982 (COMPLAINT WITH EEOC IS PREREQUISITE TO MAINTENANCE OF DISCRIMINATION SUIT UNDER TITLE VII) ; TURNER V. UNIFICATION CHURCH, 473 F . SUPP. 367, 376-77 (D. R. I. 1978), AFF'd, 602 F .2d 458 (1ST CIR. 1979) (NO PRIVATE CAUSE OF ACTION UNDER 26 U.S.C. SEC. 6051);

28 U.S.C. 1332 (DIVERSITY REQUIRED IF NO FEDERAL QUESTION STATED). THE PLAINTIFF'S SIMPLE RECITAL OF NUMEROUS STATUTES AND CONSTITUTIONAL PROVISIONS DOES NOT OTHERWISE STATE A CLAIM WITHIN THIS COURT'S JURISDICTION. ACCORDINGLY, THIS ACTION IS DISMISSED. DONE AND ORDERED IN CHAMBERS AT TAMPA, FLORIDA, THIS 10 TH DAY OF NOVEMBER, 1986

/s/

GEORGE C. CARR

UNITED STATES DISTRICT JUDGE

STATE OF FLORIDA

DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY

DIVISION OF WORKERS' COMPENSATION

OFFICE OF THE DEPUTY COMMISSIONER

DISTRICT "M"

EMPLOYEE:

DAVID POTTER
7310 U.S. HIGHWAY 301, N.
BOX 71
ELLENTON, FL 33532

ATTORNEY

* PRO SE

EMPLOYER:

WACKENHUT CORPORATION
7729 HOLIDAY DRIVE
SNUG HARBOR VILLAGE
SARASOTA, FL 33581

JAMES A. SMITH, ESQ.
2907 BAY TO BAY BLVD.
SUITE 201
TAMPA, FL 33629

INSURER:(SERVICING AGENT)
P.O.BOX 3501
WINTER PARK, FL 32790

CLAIM NUMBER:
263-80-3882

DATE OF ACCIDENT:
3-26-84

COMPENSATION ORDER

THIS CLAIM CAME ON FOR HEARING FOR A PRETRIAL CONFERENCE BEFORE THE UNDERSIGNED, UPON DUE NOTICE TO THE PARTIES IN SARASOTA, SARASOTA COUNTY, FLORIDA ON JANUARY 22, 1987.

IT APPEARS THAT THE EMPLOYEE HAS, PURSUANT TO MY PRIOR ORDER, BEEN EXAMINED BY DR. SPREHE. THE CLAIMANT IS AGREEABLE TO CONTINUE TREATMENT WITH

DR. SPREHE AS NEEDED AND THE CARRIER HAS VOLUNTEERED THIS TREATMENT. SIMILARLY, AT THE CLAIMANT'S REQUEST, DR. MCELVEEN HAS BEEN AUTHORIZED FOR A NEUROLOGICAL EVALUATION AND TREATMENT. THE PHYSICIANS AND THE EMPLOYER/CARRIER WISH DISCLOSURE, PRIOR MEDICAL RECORDS INCLUDING VETERANS ADMISISTRATION RECORDS AND THAT IS ORDERED. IT APPEARS THE CARRIER HAS VOLUNTARILY PROVIDED ALL THOSE BENEFITS REQUESTED IN THE CLAIM.

AS TO THE BALANCE OF THE CLAIM ATTACKING THE CONSTITUTIONALITY AND SUFFICIENCY OF THE WORKER'S COMPENSATION STATUTE UNDER FEDERAL AND STATE LAW, I FIND THAT I LACK JURISDICTION TO CONSIDER THOSE ISSUES THOUGH TIMELY RAISED. THE CLAIMANT MUST SEEK HIS REMEDY, IF ANY, IN THE FEDERAL OR CIRCUIT COURTS.

IT IS THEREFORE ORDERED AND ADGUDGED:

1.) THAT STIPULATIONS OF THE PARTIES AS TO THE PROVISION OF CARE BY DOCTORS SPREHE AND MCELVEEN IS APPROVED.

2.) THAT THE EMPLOYEE WILL EXECUTE AND DELIVER PROMTLY TO THE ATTORNEY FOR THE EMPLOYER/CARRIER THE NECESSARY RELEASES TO OBTAIN THE MEDICAL RECORDS INCLUDING VETERANS ADMINISTRATION RECORDS.

3.) THAT ON MY OWN INITIATIVE AND WITHOUT OBJECTION ANY SUCH RECORDS FURNISHED TO ME WILL BE SEALED IN THE DIVISION FILE UNTIL FURTHER ORDER.

4.) THE CLAIM FOR COMPENSATION NOW PENDING IS DISMISSED WITHOUT PREJUDICE TO REFILING ADDITIONAL CLAIMS AS MAY BE REQUIRED IN THE FUTURE.

DONE AND ORDERED IN FORT MYERS, LEE COUNTY, FLORIDA.

/ S/

HONORABLE PATRICK J. MURPHY
DEPUTY COMMISSIONER (SEAL)

I CERTIFY THAT THE FOREGOING COMPENSATION ORDER WAS ENTERED AND TRUE COPIES SERVED BY MAIL OR BY HAND DELIVERY ON THE PARTIES AND COUNSEL AT THE ADDRESSES WRITTEN ABOVE ON JANUARY 27, 1987.

/s/

LINDA L. RATH
ASSISTANT TO THE
DEPUTY COMMISSIONER

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
OCT 19 1987
MIGUEL J. CORTEZ
CLERK

NOTICE OF APPEAL TO THE SUPREME COURT OF UNITED STATES FROM A ORDER OF A U.S. DISTRICT COURT WHICH WAS AFFIRM- BY A U.S. COURT OF APPEALS --- ELEVENTH CIRCUIT

U.S.D.C. NO. 86-586-CIV-T-13(C)

U.S.C.A. NO. 87-3010

DOCKET NUMBER:

DAVID A. POTTER, LAYMAN APPELLANT PRO SE

VERSUS

THE WACKENHUT CORPORATION, ET ALIA,
APPELLEE

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT DAVID A. POTTER, LAYMAN APPELLANT PRO SE ABOVE NAMED, HEREBY RESPECTFULLY APPEALS TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA FROM THE ORDER DISMISSING THE ABOVE STY- CAUSE ON THE 10 TH DAY OF NOVEMBER, 1986; AND, THE AFFIRMING ORDER OF THE U.S.C.A. OF OCTOBER 6 TH, 1987.

DATED: 10-14-'87

DAVID A. POTTER /S/
SIGNATURE OF APPELLANT
BOX 3-I
115- 10TH STREET W.
PALMETTO, FL 34221-3901
(813) 729-7095/776-2243

ABRIDGED APPENDIX OF CONSTITUTIONAL AUTHORITY

PREAMBLE: WE, THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY, PROVIDE FOR THE COMMON DEFENCE, PROMOTE THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE III

SECTION 1. THE JUDICIAL POWER OF THE UNITED STATES SHALL BE VESTED IN ONE SUPREME COURT, . . .

SECTION 2. THE JUDICIAL POWER SHALL EXTEND TO ALL CASES, IN LAW AND EQUITY, ARISING UNDER THIS CONSTITUTION, THE LAWS OF THE UNITED STATES, . . . (;) . . .

ARTICLE IV

SECTION 1. FULL FAITH AND CREDIT SHALL BE GIVEN IN EACH STATE TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS OF EVERY OTHER STATE. . . .

SECTION 2. THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES. . . .

ARTICLE VI, CLAUSE 2

THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF . . . , UNDER THE AUTHORITY OF THE UNTIED STATES, SHALL BE THE SUPREME LAW OF THE LAND ; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

AMENDMENT I

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

AMENDMENT IV

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, . . . SHALL NOT BE VIOLATED, . . .

AMENDMENT V

NO PERSON SHALL BE . . . DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; . . .

AMENDMENT IX

THE ENUMERATION IN THE CONSTITUTION, OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

AMENDMENT XIII

SECTION 1. NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE, . . ., SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION.

AMENDMENT XIV

SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

CERTIFICATE OF SERVICE

I, DAVID A. POTTER, PRO SE, DO HEREBY CERTIFY THAT A TRUE AND RE-TYPED COPY OF THE FOREGOING ABRIDGED JURISDICTIONAL STATEMENT TO THE SUPREME COURT OF THE UNITED STATES, WAS OR HAS BEEN DEPOSITED IN A UNITED STATES POST OFFICE WITH FIRST CLASS POSTAGE PREPAID, AND PROPERLY ADDRESSED TO THE HONORABLE CLERK OF THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA , AND TO THE DEFENDANT'S / APPELLEE'S COUNSELS OF RECORD; THAT IS, 40 COPIES TO THE HONORABLE CLERK AND ONE COPY TO EACH FIRM FOR COUNSELS OF RECORD ON

THIS DATE: 12-31-87

RESPECTFULLY SUBMITTED BY

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(2)

Supreme Court, U.S.
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CLERK

Docket No.: 87-1145

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

DAVID A. POTTER, Appellant,

vs.

THE WACKENHUT CORPORATION, et al,
Appellees.

Appeal from the United States Court of Appeals,
Eleventh Circuit

MOTION TO DISMISS AND, IN THE ALTERNATIVE,
MOTION TO AFFIRM

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3 PP

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I. MOTION TO DISMISS

Pursuant to Rule 16 of the Supreme Court Rules of the United States, Subsection 1(a), the Court will receive a Motion to Dismiss an Appeal on the ground that the Appeal is not within this Court's jurisdiction, or because not taken in conformity with statute or with these Rules.

Argument:

A. Motion to Dismiss this Appeal on the Ground that this Appeal is not within this Court's jurisdiction.

Initially, a brief summary of the facts on which this Appeal is based is provided pursuant to Rule 42 of the Supreme Court Rules of the United States. On May 19, 1986, Mr. Potter filed a complaint against his employer, Wackenhut Corporation, alleging a violation of his civil rights. Included as defendants

were Berger-Hembree Real Estate and Knowles Wallis, Incorporated. On July 9, 1986, Mr. Potter filed a Motion to Join the workers' compensation carrier/-insurer for Wackenhut Corporation, the Home Insurance Company.

In Mr. Potter's complaint filed on May 19, 1986, he alleged that he was threatened and assaulted by Mr. Robert McFarlane during his employment as a security officer at 35 South Boulevard of the Presidents, Saint Armands, Sarasota, Florida, on March 26, 1984. As a result of the assault he sustained permanent bodily injury and his pre-existing physical and emotional injuries were aggravated. Mr. Potter further alleged that he had given notice to his employer and complained about Mr. McFarlane's threats and Wackenhut did nothing to prevent the continued threats and subsequent assault. Mr. Potter

claimed he was coerced and intimidated by representatives of his employer, Wackenhut Corporation, not to file a police report or to seek medical care. Lastly, he alleged he had exhausted state and federal remedies to no avail and that Wackenhut Corporation had refused to release his 1985 I.R.S. W-2 Form causing him further emotional distress.

The United States District Court of the Middle District of Florida rendered an Order on November 10, 1986, dismissing Mr. Potter's Complaint for failure to state a cognizable claim within the jurisdiction of the federal court. It based its decision upon the ruling in Stafford v. Muscogee County Board of Education, 688 F.2d 1383 (11th Cir. 1982) holding that a Complaint with the E.E.O.C. was a prerequisite to maintenance of a discrimination suit under Title VII

and the ruling in Turner v. Unification Church, 473 F.Supp. 367, 376-77 (D.R.I. 1978), aff'd. 602 F.2d 458 (1st Cir. 1979) holding there was no private cause of action under 26 U.S.C. §6051(a). In addition, the District Court noted that in circumstances where no federal question was stated that diversity was required pursuant to 28 U.S.C. §1332 to maintain a federal cause of action.

On January 5, 1987, Mr. Potter filed a Notice of Appeal with the United States Supreme Court of Appeals, Eleventh Circuit. The Eleventh Circuit entered an Order affirming the ruling of the District Court on October 6, 1987, without opinion. Mr. Potter now seeks appellate review of the Order entered by the U.S. Court of Appeals, Eleventh Circuit, by the U.S. Supreme Court by way of an appeal.

Pursuant to Supreme Court Rule 28(c),

this proceeding draws into question the constitutionality of Florida Statutes Section 440 and, therefore, 28 U.S.C. §2403(b) may be applicable. A copy of this Motion has been served upon the Attorney General of the State of Florida. To the undersigned's knowledge, neither the Federal District Court of the Middle District of Florida nor the U.S. Court of Appeals, Eleventh Circuit, has certified to the Attorney General of the State of Florida the fact that the constitutionality of Florida Statute §440 has been drawn into question.

Within the federal system there are numerous pleading requirements not commonly found in the states. The reason for this is that Federal courts are courts of limited jurisdiction. Specifically, the jurisdiction of a federal court is a grant of authority given

to them by Congress. Neirbo Co. v. Bethlehem Shipbuilding Corporation, 308 U.S. 165, 167, 60 S.Ct. 153, 154, 84 L.Ed. 167 (1939). There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown. Hanford v. Davies, 163 U.S. 273, 16 S.Ct. 1051, 41 L.Ed. 157 (1896); Smith v. McCullough, 270 U.S. 456, 46 S.Ct. 338, 70 L.Ed. 682 (1926); Le Mieux Bros. v. Tremont Lumber Co., 140 F.2d 387 (5th Cir. 1944). See also, Kirkland Masonry, Inc. v. C. I.R., 614 F.2d 532 (5th Cir. 1980); Davidson v. Lovett, 446 F.Supp. 1171 (D.C. Ga. 1978). Where jurisdiction is based on the existence of a federal question, the jurisdictional allegation must state that the cause of action arises out of a particular provision of the Constitution or Statute and the body of the Complaint must state

facts showing that the case does in fact arise under federal law. A general allegation of a federal question will not suffice if it is not supported by the matters constituting the claim for release as set forth in the Complaint. Mantin v. Broadcast Music, Inc., 244 F.2d 204 (9th Cir. 1957).

Jurisdictional allegations must be proved, Roberts v. Lewis, 144 U.S. 653, 12 S.Ct. 781, 36 L.Ed. 579 (1892), and the party invoking federal jurisdiction has the burden of proof. McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 (1935); Ray v. Bird and Son and Asset Realization Co., 519 F.2d 1081 (5th Cir. 1975).

Based on the incident which occurred on March 26, 1984, as well as the alleged activities of the Defendants, Mr. Potter has alleged six sources of this Court's

jurisdiction to hear this cause. Specifically, he has alleged 18 U.S.C. §§241, 245, 1512 and 1513; 42 U.S.C. §§1985(2), 2000e-2 and 2000e-3; 29 U.S.C. §§201 and 215(a)(3); 28 U.S.C. §1343; 26 U.S.C. §6051(a); and, lastly, Florida Statutes §440.205. Although federal courts are liberal in their pleading practices, it is still required that a general allegation of jurisdiction must be born out by a well pleaded claim. General conclusionary allegations unsupported by facts are insufficient to constitute a cause of action. Jewell v. City of Covington, 425 F.2d 459 (5th Cir.) cert. den. 400 U.S. 929 (1970). The following discussion will show that the aforementioned grounds of jurisdiction are not applicable in this cause and, therefore, this Court lacks subject matter jurisdiction of Mr. Potter's claims against Defendant,

Wackenhut Corporation.

18 U.S.C. §§241, 245, 1512 and 1513:

The provisions of 18 U.S.C. §§241 and 245 relate to the deprivation of civil rights, however, there is no private right of action under either of these statutes. Dugar v. Coughlin, 613 F.Supp. 849 (SD NY 1985). See also, Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980); Moriani v. Hunter, 462 F.Supp. 353 (SD NY 1978). Section 1512 addresses tampering with a witness, victim or informant and Section 1513 proscribes retaliating against a witness, victim or informant. None of these provisions are jurisdictional in nature.

It is clear that these statutes proscribe criminal offenses for which the United States may institute prosecution. Federal courts are given a grant of jurisdiction to hear cases involving

offenses against the laws of the United States in 18 U.S.C. §3231.

As the case at bar is not a criminal prosecution by the United States and the aforementioned allegations for jurisdiction are non-jurisdictional, this Court does not have the requisite jurisdiction over Mr. Potter's claims asserting violations of the aforementioned federal criminal statutes.

42 U.S.C. §§ 1985(2), 2000e-2 and 2000e-3:

Mr. Potter also alleges subject matter jurisdiction under §1985(2), which addresses conspiracy to interfere with civil rights by obstructing justice, and by intimidating a party, witness or juror. It is also alleged that jurisdiction is based on 42 U.S.C. §2000e-2, which proscribes discrimination because of race, color, religion, sex or national origin and §2000e-3 which proscribes

other unlawful employment discrimination practices by employers against employees and applicants for employment. These provisions of Title 42 are not jurisdictional but are instead remedial. In Howard v. State Department of Highways, 478 F.2d 581 (10th Cir. 1973), the court held that §1985 clearly created no separate rights itself but, instead, conferred remedies for enforcement of rights arising under the Federal Constitution or Federal Law and makes grants of federal jurisdiction to hear cases and where no substantial federal question is presented, dismissal for want of jurisdiction was proper.

Sections 2000e-2 and 2000e-3 are provisions of Title VII of the Civil Rights Act of 1964. As indicated previously, these provisions are also remedial and intended to eliminate inconvenience, unfairness and the humility of discrimi-

nation. Sedlacek v. Hach, 752 F.2d 333 (8th Cir. 1985). See also, Rutherford v. American Bank of Commerce, 565 F.2d 1162 (10th Cir. 1977). Therefore, the provisions upon which Mr. Potter has relied for jurisdiction under Title 42 are not applicable as they are non-jurisdictional.

The jurisdictional prerequisites for bringing Title VII actions are enumerated in 42 U.S.C. §2000e-5. Section 2000e-5 specifies the procedures for filing discrimination claims against employers for unlawful employment practices as well as the time parameters for filing a claim and the various rights of the parties. A complaining party must satisfy two jurisdictional prerequisites in order to bring suit under Title VII: (a) A charge must be filed with the Equal Employment Opportunity Commission

(hereinafter referred to as the "E.E.O.C."), and (b) Statutory notice from the E.E.O.C. of the right to sue must be received. This Court has upheld the two-part jurisdictional requirement for Title VII actions, ruling that Plaintiffs must have filed a charge with the E.E.O.C. and, secondly, must have received a right to sue letter from the E.E.O.C. and acted upon it. Alexander v. Gardner-Denver Company, 415 U.S. 36, 47, 94 S.Ct. 1011, 1019, 39 L.Ed.2d 147 (1974); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798, 93 S.Ct. 1817, 1822, 36 L.Ed.2d 668 (1973). In the case at bar, Mr. Potter has not sufficiently exhausted the administrative remedies available to him thus enabling him, as an aggrieved party, to maintain an action with this Court. Therefore, the Court must conclude that the jurisdictional requirements for

maintaining an action with this Court have not been met.

In addition, in order to assert a discrimination claim under Title VII, a claimant must file a complaint with the E.E.O.C. within 180 days after the alleged discriminatory practice occurred. 42 U.S.C. §2000e-5(e)(1974). This 180-day period begins to run from the time the complainant knows or reasonably should know that the challenged act has occurred. Allen v. U.S. Steel Corp., 665 F.2d 689, 692 (5th Cir. 1982); Stafford v. Muscogee County Board of Education, 688 F.2d 1383 (11th Cir. 1982).

In light of the clear statutory language and controlling precedent, this Court must conclude that it is deprived of any jurisdiction to render any decision under Title VII.

29 U.S.C. §§201 and 215(a)(3):

Mr. Potter also asserts as a basis for jurisdiction the Fair Labor Standards Act which is codified in 29 U.S.C. §215(a)(3). That provision makes it unlawful for an employer covered by the Act to discharge or discriminate against an employee because the employee has filed a complaint or instituted a proceeding under or related to the Act. This provision was designed to insure effective enforcement of the Act by permitting employees to feel free to approach officials with their grievances. As with the previous allegations of jurisdiction, this provision also fails to create jurisdiction in this Court as it is non-jurisdictional. The jurisdictional basis of the Fair Labor Standards Act is codified in 29 U.S.C. §216(b).

Further, 29 U.S.C. §203(d) defines an "employer" as any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization or anyone acting in the capacity of officer or agent of such labor organization. This definitional provision adopts the definition of the term "employer" as being broader than that of common law, contemplating the possibility of several simultaneous "employers" any of which may be liable as an employer under the Fair Labor Standards Act. Hodgson v. Arnheim and Neely, Inc., 444 F.2d 609 (3rd Cir. 1971), rev'd on other grounds 410 U.S. 512, 93 S.Ct. 1138, 35 L.Ed.2d 463, reh. den. 411 U.S. 940, 93 S.Ct. 1888, 36 L.Ed.2d 402. Thus, if Mr. Potter had properly asserted the provisions for

Federal jurisdiction under the Fair Labor Standards Act, the definitional requirements found in §203(d) provide for jurisdiction over Defendant/Appellee Berger as well as Defendant/Appellee Wackenhut Corporation. However, Defendant/ Appellee, The Home Insurance Company, the workers' compensation carrier for Wackenhut Corporation, would not qualify as an employer pursuant to the aforementioned definitial section, specifically, §203(d).

Mr. Potter has also asserted that his termination was allegedly due to a complaint which he rendered to the Occupation Safety and Health Administration under Title 29. This allegation was not made in Mr. Potter's Complaint entered in this cause. As was held in George v. Aztec Rental Center, 763 F.2d 184 (5th Cir. 1985), federal law does not provide for a private cause of action

for a retaliatory discharge for such a complaint to the Occupation Safety and Health Administration.

Therefore, whether one assumes that Mr. Potter is proceeding under the Fair Labor Standards Act or his alleged complaint to the Occupation Safety and Health Administration, he has not provided this Court with any recognized claim under Federal Law.

28 U.S.C. §1343:

Mr. Potter further seeks to ground this Court's jurisdiction under the provisions of 28 U.S.C. §1343. The provisions of 28 U.S.C. §1343 give jurisdiction to federal courts in certain civil rights cases, Duffield v. Memorial Hospital Association, 361 F.Supp. 398 (DC W.Va. 1973), further, it is a jurisdictional statute and does not create any substantive rights. Jewell

v. Covington, supra, at 460. The jurisdiction conferred upon the federal courts by 28 U.S.C. §1343 is limited and redress for invasion by an individual of civil rights of another must be sought in state courts, unless diversity of citizenship is present. Harley v. Oliver, 404 F.Supp. 450 (D.C. Ark. 1975), aff'd on other grounds, 539 F.2d 1143 (8th Cir.). See, Love v. Chandler, 124 F.2d 785 (8th Cir. 1942), holding the Federal Civil Rights Statute was intended to provide for redress against state action and did not have the affect of taking into Federal control protection of private rights against invasion by individuals. See also, Aasum v. Good Samaritan Hospital, 542 F.2d 792 (9th Cir. 1976) holding it is only when asserted discriminatory conduct is of constitutional dimension and results from action under color

of state law, that jurisdiction under 28 U.S.C. §1343 attaches, and it is only when the state has "significantly" involved itself with discrimination that prohibition results. Further, in Syrek v. Pennsylvania Air National Guard, 371 F.Supp. 1349 (W.D. Pa. 1974), the court held that if the conduct complained of is practiced by a person or organization acting privately and not under color of State law, then there is no Federal jurisdiction under 42 U.S.C. §1983 or 28 U.S.C. §1343.

The essential "state action" element of a cause of action under 42 U.S.C. §1983 and jurisdiction under 28 U.S.C §1343 lends further support to dismissal in this cause for lack of subject matter jurisdiction as no state action has been alleged.

In addition, a grant of jurisdiction found in 28 U.S.C. §1343 is tempered by the "substantial federal question doctrine" which requires dismissal of any claim which does not really and substantially involve a dispute or controversy properly within the Federal court's jurisdiction. In Wiley v. National Collegiate Athletic Association, 612 F.2d 473 (10th Cir. 1979), the court held that where clearly defined constitutional principles were not at issue, the suits of student-athletes displaced with High School Athletic Association or NCAA rules did not present a substantial federal question and, thus, no jurisidiction was conferred under §1343 of an action by a student-athlete challenging the NCAA regulations rendering him ineligible to compete in intercollegiate athletic activities because he received a Federal

Education Grant and Scholarship exceeding NCAA limitations.

The allegations asserted by Mr. Potter as to the actions of private parties as well as the allegation of an assault and battery present no substantial federal question necessary to support federal jurisdiction. More specifically, in Williams v. Bennett, 689 F.2d 1370 (11th Cir., 1982), cert. den., 104 S.Ct. 335 (1983), the court held that the district court was without subject matter jurisdiction over assault and battery claims between inmates.

As no substantial federal question has been presented by Mr. Potter and no State action has been alleged, dismissal for lack of federal jurisdiction is appropriate.

26 U.S.C. §6051(a):

Mr. Potter also seeks to predicate

subject matter jurisdiction of this Court upon 26 U.S.C. §6051(a). This is a provision of the Internal Revenue Code which requires employers to provide certain documents and receipts to employees. As with the alleged jurisdiction in Title 18 and Title 42, this provision of the Internal Revenue Code is not jurisdictional. It simply imposes certain obligations upon employers and a failure to furnish the aforementioned information to the employee constitutes a criminal offense subjecting the employer to a fine and imprisonment pursuant to 26 U.S.C. §7204.

Thus, Mr. Potter's claims under Title 26 lack subject matter jurisdiction because they do not arise in the context of a civil suit by the United States at the insistence of the Attorney General or a criminal prosecution by the United

States.

Florida Statutes §440:

Florida Statues, Chapter 440, which encompases the Florida Workers' Compensation Act, has been frequently upheld against attacks of being unconstitutional. An attempt by Mr. Potter to assert the pendant jurisdiction of this court over state law claims is without merit as the alleged federal claims he has asserted do not have sufficient substance to invoke the subject matter of this Court.

Further, where there are no federal claims and no diversity of citizenship, causes of action arising under state law must be dismissed. Prince v. Wallace, 568 F.2d. 1176 (5th Cir. 1978).

Therefore, as Mr. Potter has failed to allege the necessary requisites for pendant jurisdiction of this Court and has failed to establish that diversity

of citizenship is present, the State claims should be dismissed.

Conclusion:

For the foregoing reasons, the undersigned respectfully requests this Honorable Court to dismiss the appeal entered in this cause on the ground that the Appeal is not within this Court's jurisdiction.

B. Motion to Dismiss this Appeal Because it was Not Taken in Conformity with the Supreme Court Rules.

It is asserted that further appellate review, if any, should be by way of Petition for Writ of Certiorari as opposed to review by way of an Appeal. The term "Appeal" is used to denote the right of a litigant to invoke the obligatory jurisdiction of this Court. None of the allegations asserted by Mr. Potter fall within the obligatory jurisdiction of this Court. Therefore, any review by this Court should be by way of Certiorari.

II. MOTION TO AFFIRM THE JUDGEMENT SOUGHT TO BE REVIEWED ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ON THE GROUND THAT IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THIS CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS TO NOT NEED FURTHER ARGUMENT.

This Motion to Affirm is entered pursuant to Supreme Court Rule 16, 1(c).

As the aforementioned discussion regarding the Motion to dismiss this Appeal indicates, Mr. Potter has failed to state a cause of action within the jurisdiction of this Court and, therefore, further argument regarding the substantive issues in this cause would be futile.

The aforementioned discussion has shown that Mr. Potter's allegations of federal jurisdiction have been precluded by controlling authority and, therefore,

no further consideration is warranted. Manfredi v. Maher, 435 F.Supp. 1106 (D.C. Conn. 1977).

Therefore, based on the foregoing, the undersigned respectfully requests this Court to affirm the judgment entered by the United States Court of Appeals for the Eleventh Circuit.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and forty copies of the foregoing has been furnished by U.S. Mail to the Honorable Joseph F. Spaniol, Jr., Clerk, United States Supreme Court, Washington, D.C., 20543; and copies to G. Hunter Gibbons, Esquire, 1750 Ringling Boulevard, Sarasota, Florida, 34236; David A. Potter, Box 3-I, 115 10th Street West, Palmetto, Florida, 34221-3901; Alley & Alley Chartered, 205 Brush Street, Tampa, Florida, 33601; and Robert A. Butterworth, Attorney General, State of Florida, The Capitol, Tallahassee, Florida, 32301, this 2nd day of February, 1988.

JOHN N. JENKINS, ESQUIRE
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ATTORNEY FOR APPELLEE,
THE HOME INSURANCE COMPANY

SWORN TO AND SUBSCRIBED before me this ____ day of February, 1988.

_____

NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

_____